The Commonwealth of Alassachusetts

Report of the committee of conference on the disagreeing votes of the two branches, with reference to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2080) of the House Bill relative to sentencing and improving law enforcement tools (House, No. 3818), recommending that the House recede from its non-concurrence with the Senate in its amendment and concur therein with a further amendment by striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 4286. July 17, 2012.

Eugene L. O'Flaherty	
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The Commonwealth of Alassachusetts

In the Year Two Thousand and Twelve

Striking out all after the enacting clause and inserting in place thereof the following:

- 1 "SECTION 1. Section 3 of chapter 22E of the General Laws, as appearing in the 2010 Official Edition, is
- 2 hereby amended by inserting, after the first sentence, the following sentence:-
- 3 The trial court and probation department shall work in conjunction with the director to establish and
- 4 implement a system for the electronic notification to the department whenever a person is convicted of an
- 5 offense that requires the submission of a DNA sample under this section.
- 6 SECTION 2. Section 4 of said chapter 22E, as so appearing, is hereby amended by striking out, in line 3,
- 7 the words 'Only a' and inserting in place thereof the following word: A.
- 8 SECTION 3. Said section 4 of said chapter 22E, as so appearing, is hereby further amended by striking
- 9 out, in line 5, the word 'licensed' and inserting in place thereof the following word: approved.
- 10 SECTION 4. Said section 4 of said chapter 22E, as so appearing, is hereby further amended by inserting
- after the word 'including', in lines 7 and 8, the following words:- buccal swabs and.
- SECTION 5. Section 11 of said chapter 22E, as so appearing, is hereby amended by striking out, in line 2,
- the words 'refuses to provide such DNA sample' and inserting in place thereof the following words:-,
- after receiving written notice, fails to provide such DNA sample within 1 year of conviction, adjudication
- or release from custody, as required by section 3, whichever occurs first,.
- SECTION 6. The first paragraph of section 4 of chapter 27 of the General Laws, as so appearing, is
- 17 hereby amended by adding the following sentence:- The governor may, with the advice and consent of the
- council, remove members from the board for cause, upon a written certification of such cause; provided,
- 19 that such member shall have the right to notice and the opportunity for a public hearing before the council
- 20 relative to such removal.
- 21 SECTION 7. Said section 4 of said chapter 27, as so appearing, is hereby further amended by striking out,
- in line 6, the word 'five' and inserting in place thereof the following figure:- 9.
- 23 SECTION 8. Said section 4 of said chapter 27, as so appearing, is hereby further amended by inserting
- 24 after the word 'association,', in line 8, the following words:- 1 person chosen from a list of 3 nominees

- submitted by the Massachusetts District Attorneys Association, 1 person chosen from a list of 3 nominees
- submitted by the committee for public counsel services, 1 person chosen from a list of 3 nominees
- submitted by the Prisoners' Legal Services and 1 member from local law enforcement.
- SECTION 9. The second paragraph of said section 4 of said chapter 27, as so appearing, is hereby further
- amended by inserting after the third sentence the following sentence:- At least 1 person on said list shall
- 30 be a professional with not less than 5 years of experience and training in adolescent development and
- 31 psychology, and shall be selected from a list of proposed nominees provided by the following
- 32 organizations: the Massachusetts Chapter of the American Academy of Pediatrics, Inc.; the New England
- 33 Council of Child and Adolescent Psychiatry, Inc.; the Massachusetts Psychological Association, Inc.; and
- 34 the Massachusetts Psychiatric Society, Inc.
- 35 SECTION 10. Said section 4 of said chapter 27, as so appearing, is hereby further amended by inserting
- after the word 'Association,', in line 30, the following words:- a victim witness advocate; provided, that
- 37 such victim representative is otherwise qualified as provided for above,.
- 38 SECTION 11. Section 19 of chapter 94C of the General Laws, as so appearing, is hereby amended by
- 39 adding the following subsection:
- 40 (d) Naloxone or other opioid antagonist may lawfully be prescribed and dispensed to a person at risk of
- 41 experiencing an opiate-related overdose or a family member, friend or other person in a position to assist
- a person at risk of experiencing an opiate-related overdose. For purposes of this chapter and chapter 112,
- any such prescription shall be regarded as being issued for a legitimate medical purpose in the usual
- 44 course of professional practice.
- 45 SECTION 12. Section 32 of chapter 94C of the General Laws, as so appearing, is hereby amended by
- striking out, in lines 15, 17 and 20, the word 'five' and inserting in place thereof, in each instance, the
- 47 following figure: 3½.
- 48 SECTION 13. Section 32A of said chapter 94C, as so appearing, is hereby amended by striking out, in
- 49 lines 15 and 18, the word 'three' and inserting in place thereof, in each instance, the following figure:- 2.
- 50 SECTION 14. Section 32A of said chapter 94C, as so appearing, is hereby further amended by striking
- out, in line 42, the word 'five' and inserting in place thereof the following figure: 3½.
- 52 SECTION 15. Section 32B of said chapter 94C, as so appearing, is hereby amended by striking out, in
- 53 line 16, the word 'two' and inserting in place thereof the following words:- 18 months.
- 54 SECTION 16. Section 32B of said chapter 94C, as so appearing, is hereby further amended by striking
- out, in line 19, the words 'two years' and inserting in place thereof the following words:- 18 months.

- SECTION 17. Section 32E of said chapter 94C, as so appearing, is hereby amended by striking out, in
- lines 19 and 21, the word 'three' and inserting in place thereof, in each instance, the following figure: 2.
- 58 SECTION 18. Said section 32E of said chapter 94C, as so appearing, is hereby further amended by
- striking out, in line 27 and in line 29, the first time it appears, the word 'five' and inserting in place
- 60 thereof, in each instance, the following figure: 3½.
- 61 SECTION 19. Said section 32E of said chapter 94C, as so appearing, is hereby further amended by
- striking out, in lines 33 and 35, the word 'ten' and inserting in place thereof, in each instance, the
- 63 following figure: 8.
- 64 SECTION 20. Said chapter 94C, as so appearing, is hereby further amended by striking out, in lines 43
- and 45, the word 'fourteen' and inserting in place thereof, in each instance, the following figure: 18.
- 66 SECTION 21. Subsection (b) of said section 32E of said chapter 94C, as so appearing, is hereby further
- amended by striking out clause (1) and clause (2) and inserting in place thereof the following 2 clauses:-
- 68 (1) Eighteen grams or more but less than 36 grams, be punished by a term of imprisonment in the state
- 69 prison for not less than 2 nor more than 15 years. No sentence imposed under this clause shall be for less
- than a minimum term of imprisonment of 2 years, and a fine of not less \$2,500 nor more than \$25,000
- 71 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.
- 72 (2) Thirty-six grams or more, but less than 100 grams, be punished by a term of imprisonment in the state
- prison for not less than 3½ nor more than 20 years. No sentence imposed under this clause shall be for
- 74 less than a mandatory minimum term of imprisonment of 3½ years, and a fine of not less than \$5,000 nor
- 75 more than \$50,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as
- 76 established herein.
- 577 SECTION 22. Said section 32E of said chapter 94C, as so appearing, is hereby further amended by
- 78 striking out, in line 65 and in line 67, the first time it appears, the word 'ten' and inserting place thereof, in
- 79 each instance, the following figure: 8.
- 80 SECTION 23. Said section 32E of said chapter 94C, as so appearing, is hereby further amended by
- 81 striking out, in lines 71 and 73, the word 'fifteen' and inserting place thereof, in each instance, the
- 82 following figure: 12.
- 83 SECTION 24. Said section 32E of said chapter 94C, as so appearing, is hereby further amended by
- striking out, in lines 81 and 83, the word 'fourteen' and inserting in place thereof, in each instance, the
- 85 following figure: 18.

- 86 SECTION 25. Subsection (c) of said section 32E of said chapter 94C, as so appearing, is hereby further
- 87 amended by striking out clauses (1) and (2) and inserting in place thereof the following 2 clauses:-
- 88 (1) Eighteen grams or more but less than 36 grams, be punished by a term of imprisonment in the state
- 89 prison for not less than 3½ nor more than 20 years. No sentence imposed under this clause shall be for
- 90 less than a mandatory minimum term of imprisonment of 3½ years, and a fine of not less than \$5,000 nor
- 91 more than \$50,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as
- 92 established herein.
- 93 (2) Thirty-six grams or more but less than 100 grams, be punished by a term of imprisonment in the state
- prison for not less than 5 nor more than 20 years. No sentence imposed under this clause shall be for less
- 95 than a mandatory minimum term of imprisonment of 5 years, and a fine of not less than \$5,000 nor more
- 96 than \$50,000 may be imposed, but not in lieu of the mandatory minimum term of imprisonment, as
- 97 established herein.
- 98 SECTION 26. Said section 32E of said chapter 94C, as so appearing, is hereby further amended by
- 99 striking out, in line 104 and in line 106, the first time it appears, the word 'ten' and inserting place thereof,
- in each instance, the following figure: 8.
- SECTION 27. Said section 32E of said chapter 94C, as so appearing, is hereby further amended by
- striking out, in lines 111 and 113, the word 'fifteen' and inserting place thereof, in each instance, the
- following figure:- 12.
- SECTION 28. Section 32H of said chapter 94C, as so appearing, is hereby amended by striking out, in
- line 28, the word 'or'.
- SECTION 29. Said section 32H of said chapter 94C, as so appearing, is hereby further amended by
- inserting after the figure '127', in line 29, the following words:-; or (4) to engage in employment under a
- work release program under sections 49, 49A, 86F or 86G of chapter 127.
- SECTION 30. Section 32J of said chapter 94C, as so appearing, is hereby amended by striking out, in
- lines 3 and 4, the words 'one thousand feet' and inserting in place thereof the following words:- 300 feet.
- SECTION 31. Said section 32J of said chapter 94C, as so appearing, is hereby further amended by
- striking out, in line 6, the word 'whether' and inserting in place thereof the following words:- if the
- violation occurs between 5:00 a.m. and midnight, whether.
- SECTION 32. Chapter 94C of the General Laws is hereby amended by inserting, after section 34, the
- following section:

- Section 34A. (a) A person who, in good faith, seeks medical assistance for someone experiencing a drug-
- related overdose shall not be charged or prosecuted for possession of a controlled substance under
- sections 34 or 35 if the evidence for the charge of possession of a controlled substance was gained as a
- result of the seeking of medical assistance.
- 120 (b) A person who experiences a drug-related overdose and is in need of medical
- assistance and, in good faith, seeks such medical assistance, or is the subject of such a good faith request
- for medical assistance, shall not be charged or prosecuted for possession of a controlled substance under
- said sections 34 or 35 if the evidence for the charge of possession of a controlled substance was gained as
- a result of the overdose and the need for medical assistance.
- 125 (c) The act of seeking medical assistance for someone who is experiencing a drug-related overdose may
- be used as a mitigating factor in a criminal prosecution under the Controlled Substance Act,1970 P.L. 91-
- 127 513, 21 U.S.C. section 801, et seq.
- (d) Nothing contained in this section shall prevent anyone from being charged with trafficking,
- distribution or possession of a controlled substance with intent to distribute.
- 130 (e) A person acting in good faith may receive a naloxone prescription, possess
- naloxone and administer naloxone to an individual appearing to experience an opiate-related overdose.
- SECTION 33. Section 129D of chapter 127 of the General Laws, as so appearing, is hereby amended by
- striking out, in line 14, the words 'two and one-half' and inserting in place thereof the following figure:-
- 134 5.
- SECTION 34. Said section 129D of said chapter 127, as so appearing, is hereby further
- amended by striking out, in line 19, the words 'seven and one-half' and inserting in place thereof the
- following figure:- 10.
- SECTION 35. The first paragraph of said section 129D of said chapter 127, as so appearing, is hereby
- further amended by striking out the last sentence and inserting in
- place thereof the following 3 sentences:- For a prisoner's successful completion of a
- program or activity requiring 6 months of satisfactory participation, as designated by the
- 142 commissioner, the commissioner may grant an additional deduction of sentence of up to
- 143 10 days, to be deducted in the month during which successful completion of the

144 designated program or activity is achieved. Such further deduction of sentence shall be 145 added to any deduction to which the prisoner is entitled under said section 129C for reducing the term of imprisonment by deduction from the maximum term for which the prisoner 146 147 may be held under the prisoner's sentence or sentences, and for reducing from the minimum term of the 148 sentence or sentences the good conduct credits earned under this section for parole eligibility as provided 149 under section 133. No prisoner shall be eligible for a reduced sentence under this section unless they have 150 satisfied both the requirements of the program or activity and demonstrated competency in the material, 151 as determined by the commissioner. 152 SECTION 36. Section 130 of said chapter 127, as so appearing, is hereby amended by striking out the first and second sentences and inserting in place thereof the following 5 sentences:- No prisoner shall be 153 154 granted a parole permit merely as a reward for good conduct. Permits shall be granted only if the board is 155 of the opinion, after consideration of a risk and needs assessment, that there is a reasonable probability 156 that, if the prisoner is released with appropriate conditions and community supervision, the prisoner will 157 live and remain at liberty without violating the law and that release is not incompatible with the welfare of 158 society. In making this determination, the parole board shall consider whether, during the period of 159 incarceration, the prisoner has participated in available work opportunities and education or treatment programs and demonstrated good behavior. The board shall also consider whether risk reduction 160 161 programs, made available through collaboration with criminal justice agencies would minimize the 162 probability of the prisoner re-offending once released. The record of the board's decision shall contain a 163 summary statement of the case indicating the reasons for the decision, including written certification that each board member voting on the issue of granting a parole permit has reviewed the entire criminal record 164 165 of the applicant, as well as the number of members voting in favor of granting a parole permit and the 166 number of members voting against granting a parole permit. 167 SECTION 37. Section 133A of said chapter 127, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following 3 sentences:- Every prisoner who is serving a 168 169 sentence for life in a correctional institution of the commonwealth, except prisoners confined to the 170 hospital at the Massachusetts Correctional Institution, Bridgewater, except prisoners serving a life 171 sentence for murder in the first degree and except prisoners serving more than 1 life sentence arising out 172 of separate and distinct incidents that occurred at different times, where the second offense occurred 173 subsequent to the first conviction, shall be eligible for parole at the expiration of the minimum term fixed 174 by the court under section 24 of chapter 279. The parole board shall, within 60 days before the expiration 175 of such minimum term, conduct a public hearing before the full membership unless a member of the 176 board is determined to be unavailable as provided in this section. Notwithstanding the previous sentence,

- the board may postpone a hearing until 30 days before the expiration of such minimum term, if the
- interests of justice so require and upon publishing written findings of the necessity for such
- postponement.
- SECTION 38. Said section 133A of said chapter 127, as so appearing, is hereby further amended by
- inserting after the word 'procedure', in line 28, the following words:-; provided, however, that no hearing
- shall take place until the parole board has certified in writing that it has complied with the notification
- 183 requirements of this paragraph, a copy of which shall be included in the record of such proceeding; and
- provided further, that this paragraph shall also apply to any parole hearing for an applicant who was
- convicted of a crime listed in clause (i) of subsection (b) of section 25 of chapter 279 and sentenced and
- committed to prison for 5 or more years for such crime and does not show that a pardon has been issued
- for the crime.
- SECTION 39. Said section 133A of said chapter 127, as so appearing, is hereby further amended by
- striking out, in lines 29 and 35, the words 'a majority' and inserting in place thereof, in each instance, the
- 190 following word:- two-thirds.
- 191 SECTION 40. Section 133B of said chapter 127, as so appearing, is hereby amended by striking out the
- 192 first sentence and inserting in place thereof the following 2 sentences:-
- The parole board shall, within 60 days before the expiration of two-thirds of the maximum sentence of a
- prisoner sentenced under section 25 of chapter 279, and thereafter at least once in each ensuing 2-year
- period, consider carefully and thoroughly the merits of releasing such person on parole except for: (i) a
- habitual offender sentenced under subsection (b) of said section 25 of said chapter 279 or (ii) a prisoner
- sentenced to a term of imprisonment as prescribed by the sentencing guidelines established by the
- 198 sentencing commission.
- 199 SECTION 41. Said section 133B of said chapter 127, as so appearing, is hereby further amended by
- adding the following paragraph:-
- Habitual offenders sentenced under said subsection (b) of said section 25 of said chapter 279 shall not,
- except as provided under subsection (e) of said section 25 of said chapter 279, be eligible for parole, work
- 203 release or furlough or receive any deduction from such person's sentence for good conduct.
- SECTION 42. Section 136 of said chapter 127, as so appearing, is hereby amended by inserting after the
- second sentence the following sentence:- Notwithstanding the previous sentence, the board may postpone
- a hearing until 30 days before a prisoner first becomes eligible for parole, if the interests of justice so
- require and upon publishing written findings of the necessity for such postponement.

- SECTION 43. Section 33E of chapter 278 of the General Laws, as so appearing, is hereby amended by
- striking out, in line 9, the word 'mean' and inserting in place thereof the following words:- mean: (i).
- 210 SECTION 44. Said section 33E of said chapter 278, as so appearing, is hereby further amended by
- striking out, in line 11, the word 'degree' and inserting in place thereof the following words:- degree; or
- 212 (ii) the third conviction of a habitual offender under subsection (b) of section 25 of chapter 279
- 213 SECTION 46. Section 24 of chapter 279 of the General Laws, as so appearing
- 214 , is hereby amended by striking out, in lines 1 and 2, the words 'for life
- 215 or'.
- SECTION 46. Said section 24 of said chapter 279, as so appearing, is hereby further
- amended by adding the following sentence:- In the case of a sentence to life
- imprisonment, except in the case of a sentence for murder in the first degree, and in the case of multiple
- 219 life sentences arising out of separate and distinct incidents that occurred at different times, where the
- second offense occurred subsequent to the first conviction, the court shall fix a minimum term which shall
- be not less than 15 years nor more than 25 years.
- SECTION 47. Said chapter 279 is hereby further amended by striking out section 25, as so appearing, and
- inserting in place thereof the following section:-
- Section 25. (a) Whoever is convicted of a felony and has been previously twice convicted and sentenced
- to state prison or state correctional facility or a federal corrections facility for a term not less than 3 years
- by the commonwealth, another state or the United States, and who does not show that the person has been
- pardoned for either crime on the ground that the person was innocent, shall be considered a habitual
- criminal and shall be punished by imprisonment in state prison or state correctional facility for such
- felony for the maximum term provided by law.
- 230 (b) Whoever: (i) has been convicted 2 times previously of 1 or more of the following offenses: section 1,
- section 13, section 13½, clause (i) of subsection (b) of section 13A, section 13B, subsection (a) of section
- 13B ½, section 13B ¾, section 13F, committing an assault and battery upon a child and by such assault
- and battery causing bodily injury or substantial bodily injury under subsection (b) of section 13J, section
- 14, section 15, clause (i) of subsection (c) of section 15A, section 16, sections 17 and 18 if armed with a
- firearm, shotgun, rifle, machine gun, or assault weapon, section 18A, section 18B, section 18C, section
- 236 21, section 22, section 22A, section 22B, section 22C, section 23A, section 23B, section 24, section 24B,
- section 26, section 26B, section 26C, section 28, and subsection (b) of section 39 of chapter 265, section

14 or section 102C of chapter 266, section 4A, section 17, subsection (b) of section 29A, subsection (b) 238 of section 29B, section 29C, section 35A and subsection (b) of section 53A of chapter 272, or has been 239 240 convicted 2 times previously of a like violation of the laws of another state, the United States or a 241 military, territorial or Indian tribal authority, arising out of charges separately brought and tried, and 242 arising out of separate and distinct incidents that occurred at different times, where the second offense 243 occurred subsequent to the first conviction; (ii) has been sentenced to incarceration at a state prison or 244 state correctional facility or federal correction facility for at least 3 years to be served for each of the prior 245 2 convictions; and (iii) does not show that he has been pardoned for either prior offense on the ground that he was innocent shall, upon conviction of 1 of the enumerated offenses in clause (i), where the 246 offense occurred subsequent to the second conviction, shall be considered a habitual offender and shall be 247 248 imprisoned in the state prison or state correctional facility for the maximum term provided by law for the 249 offense enumerated in clause (i). No sentence imposed under this section shall be reduced or suspended 250 nor shall such person so sentenced be eligible for probation, parole, work release or furlough or receive 251 any deduction from such person's sentence for good conduct. A sentence imposed on a habitual offender 252 under this section, if such habitual offender is incarcerated at a state prison or state correctional facility, 253 shall commence upon the conclusion of the sentence such habitual offender is serving at the time of 254 sentencing.

(c) No person shall be considered a habitual offender under subsection (b) based upon any offense for which such person was adjudicated a youthful offender, a delinquent child, or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority for which a person was treated as a juvenile.

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- (d) Upon sentencing a defendant to a qualifying term of incarceration, or prior to accepting a guilty plea for any qualifying offense listed in subsection (b), the court shall inform the defendant that a conviction or plea of guilty for such an offense implicates the habitual offender statute and that upon conviction or plea of guilty for the third or subsequent of said offenses: (1) the defendant may be imprisoned in the state prison for the maximum term provided by law for such third or subsequent offense; (2) no sentence may be reduced or suspended; and (3) the defendant may be ineligible for probation, parole, work release or furlough, or to receive any deduction in sentence for good conduct. No otherwise valid plea or conviction shall be vacated based upon the failure to give such warnings.
- SECTION 48 Notwithstanding any general or special law to the contrary, any person incarcerated on the effective date of this act for an offense which, at the time such person was sentenced on such offense, requires serving a minimum term of incarceration before such person is eligible for probation, parole, work release or release shall be eligible for probation, parole, work release and deductions in sentence for good conduct under sections 12 to 29, inclusive.

SECTION 49. Notwithstanding any general or special law to the contrary, each member appointed to the parole board shall complete a comprehensive training course within 90 days of said appointment.
(1) The department of correction shall develop the comprehensive training course using training components consistent with those offered by the National Institute of Corrections or the American Probation and Parole Association.
(2) Each member of the parole board shall complete a minimum of 8 hours of training annually.
SECTION 50. Section 5 shall take effect July 1, 2013."; and that the Senate concur in the further

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amendment.